

## REMARKS

Claims 1-6, 10-22, and 26-32 currently stand rejected. Claims 1 and 17 are amended herein. Claims 7-9 and 23-25 were previously canceled. Thus, claims 1-6, 10-22, and 26-32 remain pending. The Applicant respectfully traverses the rejections and requests allowance of the claims.

### *35 U.S.C. § 103(a) Rejection over Berthold in view of Koster and Öberg*

Claims 1, 4, 5, 11-13, 15, 17, 20, 21, 27-29, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold (U.S. Patent No. 7,174,096) in view of Koster (U.S. Patent Application Publication No. 2004/0001711) and Öberg (U.S. Patent 6,915,075). The Applicant respectfully requests withdrawal of these rejections in light of the following discussion.

Claim 1, as amended herein, recites, in part, “a first Point-of-Presence (POP) configured to receive the first user communications from a first user system over the first optical wavelength, transfer the first user communications to the optical network over the first optical wavelength, and responsive to a problem...transfer the first user communications to the optical network over the second optical wavelength instead of the first optical wavelength responsive to the first control instruction....” The combination of Berthold with Koster and Öberg does not teach “a first Point-of-Presence (POP) configured to receive the first user communications *from a first user system over the first optical wavelength*, transfer the first user communications to the optical network over the first optical wavelength, and responsive to a problem...transfer the first user communications to the optical network over the second optical wavelength instead of the first optical wavelength responsive to the first control instruction...” as recited in claim 1. Instead, Berthold receives multiple optical signals into network element 12 and directs to an appropriate transceiver 22 (Berthold, column 2, lines 47-48, and Figure 1), before splitting the optical signal at optical splitter 40 (Berthold, column 2, lines 55-57, and Figure 1). Optical splitter 40 does not *change* the wavelength of the signals, nor *switch between wavelengths*, and instead merely *mirrors* (divides) the *same* optical signal over two or more optical paths (Berthold, column 2, lines 55-57, and Figure 1). Also, the purported combination of Berthold with Koster and Öberg does not overcome the limitations of Berthold to teach or suggest the portion of claim 1 discussed above. Specifically, Koster teaches protection *within the optical*

*network* itself, as embodied in a ring topology, and not a *POP* “configured to receive the first user communications *from a first user system over the first optical wavelength*, transfer the first user communications to the optical network over the first optical wavelength, and responsive to a problem...transfer the first user communications *to the optical network* over the second optical wavelength instead of the first optical wavelength responsive to the first control instruction...” as recited in claim 1. Moreover, Öberg takes *electrical* signals as inputs to access equipment 5 (see Öberg, column 3, lines 64-67, element 5 in Figures 1-9, and claim 1), and not a first *optical wavelength* as recited in claim 1.

Therefore, the combination of Berthold with Koster and Öberg does not teach or suggest “a first Point-of-Presence (POP) configured to receive the first user communications from a first user system over the first optical wavelength, transfer the first user communications to the optical network over the first optical wavelength, and responsive to a problem...transfer the first user communications to the optical network over the second optical wavelength instead of the first optical wavelength responsive to the first control instruction...” as recited in claim 1. Advantageously, as shown in Figure 2 of the present application, since *POP 201* receives the user communications *from user system 291* over a single wavelength, a user can connect to POP 201 over a *single wavelength*, and protective wavelength switching occurs at POP 201 entry point *before* – not within – optical network 203, wavelength-division multiplexing (WDM) system 223, or add-drop multiplexing (ADM) system 225.

Furthermore, claim 1 recites, in part, “responsive to a problem detected *by the user* with the transfer of the first user communications over the first optical wavelength wherein *the user transfers a first control instruction to the first POP...*” The combination of Berthold with Koster and Öberg does not teach “responsive to a problem detected *by the user* with the transfer of the first user communications over the first optical wavelength wherein *the user transfers a first control instruction to the first POP...*” as recited in claim 1. Instead, in Berthold, *optical selector 50*, at the *receiving* side of a split pair of optical signals, monitors the optical signals and selects the communication path having the better signal quality (Berthold, Figures 1-6, column 2, line 66 – column 3, line 2). Also, the purported combination of Berthold with Koster and Öberg does not overcome the limitations of Berthold to teach or suggest the portion of claim 1 discussed above. Specifically, Koster teaches the *network operator*, using the network management system, preselecting optical protection paths and optical *network elements* detecting

problems with the optical paths (Koster, paragraphs 0021, 0024, 0040, 0045), and not of “responsive to a problem detected *by the user* with the transfer of the first user communications over the first optical wavelength wherein *the user transfers a first control instruction to the first POP...*” as recited in claim 1. Likewise, Öberg teaches of failures being detected by *signal processing circuit 29* inside access equipment 5 (Öberg, column 6, lines 3-5), or by *demultiplexer 15* (Öberg, column 6, lines 15-16), and of said equipment correcting for such failures, and not of “responsive to a problem detected *by the user* with the transfer of the first user communications over the first optical wavelength wherein *the user transfers a first control instruction to the first POP...*” as recited in claim 1. Also, the Applicant respectfully notes that the characterization of Öberg teaching detecting problems *at* the user system is different than detecting problems *by* the user as recited in claim 1 (see final Office Action dated 09/04/2008, page 3, first full paragraph).

Therefore, the combination of Berthold with Koster and Öberg does not teach or suggest “responsive to a problem detected *by the user* with the transfer of the first *user communications* over the first optical wavelength wherein the user transfers a first control instruction to the first POP...” as recited in claim 1. The limitations recited in claim 1 thus allow the *user*, from which the *user communications* originate, to control the selection between a first and second wavelength by transferring a control instruction to a point-of-presence (POP). Advantageously, a *user* transferring *user communications*, according to claim 1, doesn’t need to rely upon the *network operator* or network elements of an *optical network* to detect or correct a problem.

Based upon the above comments, Berthold, Koster, and Öberg, neither separately nor in combination, teach or suggest all of the limitations of claim 1. Furthermore, the final Office Action has not put forth a convincing line of reasoning as to why the claimed invention is obvious in light of the teachings of the references. The Applicant therefore respectfully asserts that claim 1 is not obvious in view of the prior art and is allowable.

Independent claim 17 (as amended herein) contains limitations similar to claim 1 (as amended herein), and the Applicant therefore respectfully asserted to be allowable over the art of record for the same reasons as claim 1.

While separately allowable over the art of record, dependent claims 4, 5, 11-13, 15, 20, 21, 27-29, and 31 depend from otherwise allowable independent claims. The Applicant therefore refrains from a discussion of the rejection of claims 4, 5, 11-13, 15, 20, 21, 27-29, and 31 under 35 U.S.C. § 103(a) for the sake of brevity.

*35 U.S.C. § 103(a) Rejection over Berthold in view of Koster, Oberg, and Way*

Claims 2, 3, 10, 18, 19, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold (U.S. Patent No. 7,174,096) in view of Koster (U.S. Patent Application Publication No. 2004/0001711), Öberg (U.S. Patent 6,915,075), and Way (U.S. Patent No. 7,092,642). The Applicant respectfully traverses the rejection for at least the following reasons.

Claims 2, 3, and 10 depend from independent claim 1 and claims 18, 19, and 20 depend from independent claim 17, thus incorporating the limitations of the associated independent claims. Therefore, the Applicant respectfully asserts that claims 2, 3, 10, 18, 19, and 26 are allowable for at least the reasons indicated above in support of claims 1 and 17, and such indication is respectfully requested.

Thus, in light of the discussion above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of claims 2, 3, 10, 18, 19, and 26.

*35 U.S.C. § 103(a) Rejection over Berthold in view of Koster, Oberg, and de Boer*

Claims 6 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold (U.S. Patent No. 7,174,096) in view of Koster (U.S. Patent Application Publication No. 2004/0001711), Öberg (U.S. Patent 6,915,075), and de Boer (U.S. Patent No. 6,917,759). The Applicant respectfully traverses the rejection for at least the following reasons.

Claim 6 depends from independent claim 1 and claim 22 depends from independent claim 17, thus incorporating the limitations of the associated independent claims. Therefore, the Applicant respectfully asserts that claims 6 and 22 are allowable for at least the reasons indicated above in support of claims 1 and 17, and such indication is respectfully requested.

Thus, in light of the discussion above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of claims 6 and 22.

*35 U.S.C. § 103(a) Rejection over Berthold in view of Koster, Öberg, and Fishman*

Claims 14, 16, 30, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold (U.S. Patent No. 7,174,096) in view of Koster (U.S. Patent Application Publication No. 2004/0001711), Öberg (U.S. Patent 6,915,075), and Fishman (U.S. Patent No. 6,122,082). The Applicant respectfully traverses the rejection for at least the following reasons.

Claims 14 and 16 depend ultimately from independent claim 1 and claims 30 and 32 depend ultimately from independent claim 17, thus incorporating the limitations of the associated independent and dependent claims. Therefore, the Applicant respectfully asserts that claims 14, 16, 30, and 32 are allowable for at least the reasons indicated above in support of claims 1 and 17, and such indication is respectfully requested.

Thus, in light of the discussion above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of claims 14, 16, 30, and 32.

## **CONCLUSION**

Based on the above remarks and amendments, the Applicant submits that the claims in their present form are allowable over the art of record. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant respectfully requests allowance of the claims at the Examiner's earliest convenience.

The Applicant hereby authorizes the Office to charge Deposit Account No. 21-0765 the appropriate fee under 37 C.F.R. § 1.17(e) for the Request for Continued Examination (37 C.F.R. § 1.114(a)). The Applicant believes there are no other fees due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765.

Respectfully submitted,

/David J. Bovitz/

**SIGNATURE OF PRACTITIONER**

David J. Bovitz, Reg. No. 61,911

Setter Roche LLP

Telephone: (720) 562-2280

E-mail: dave@setterroche.com

**Correspondence address:**

**CUSTOMER NO. 28004**

Attn: Steven J. Funk

Sprint

6391 Sprint Parkway

Mailstop: KSOPHT0101-Z2100

Overland Park, KS 66251-2100